

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.
NO. 05-10088-WGY

JULIANNE MARIE EVANS
Plaintiff,

VS.

NANTUCKET COMMUNITY SAILING, INC.
Defendant.

DEFENDANT'S, NANTUCKET COMMUNITY SAILING, INC.,
ANSWER TO PLAINTIFF'S COMPLAINT

Now comes the defendant, Nantucket Community Sailing, Inc., in the above entitled action, by and through its undersigned counsel, Clinton & Muzyka, P.C., and files its Answer to Plaintiff's Complaint as follows:

1. Paragraph 1 contains allegations of law to which a response is not required, but to the extent that a response is required, the defendant denies all the allegations contained therein.
2. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and therefore denies same.
3. The defendant admits that it is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts with a principal

place of business located at 4 Winter Street,
Nantucket, Massachusetts. The defendant denies
the remaining allegations contained in Paragraph
3.

4. Paragraph 4 contains allegations of law to which a
response is not required, but to the extent that a
response is required, the defendant denies all the
allegations contained therein.

5. The defendant denies the allegations in Paragraph
5.

6. The defendant denies the allegations in Paragraph
6.

7. The defendant denies the allegations in Paragraph
7.

8. The defendant denies the allegations in Paragraph
8.

9. The defendant denies the allegations in Paragraph
9.

10. The defendant denies the allegations in Paragraph
10.

11. The defendant denies the allegations in Paragraph
11.

WHEREFORE the defendant prays that this Honorable Court dismiss with prejudice Plaintiff's Complaint together with costs and reasonable attorney's fees.

AFFIRMATIVE DEFENSES

Now comes the defendant and incorporates the following Affirmative Defenses into each Count of its Answer as more fully appears below.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that the plaintiff has failed to state a cause of action upon which relief can be granted.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff sustained personal injuries as alleged, which is specifically denied, it was due to the action and/or omissions of individuals for whom the defendant is not legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff sustained injury as alleged, which is specifically denied, those injuries were the result of an Act of God for which the defendant are not legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, it was due

in whole or in part to the plaintiff's own negligence and failure to exercise a reasonable degree of care and not due to any negligence or fault on the part of the defendant nor any person or persons for whom the defendant may be legally responsible.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, it was due in whole or in part to the plaintiff's assumption of the risks associated with sailing.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, the plaintiff has failed to mitigate her damages.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that the post injury actions and vessel navigation were pursuant to plaintiff's authorization and request and not in violation of any applicable law and/or regulation.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, such injury was without the fault, knowledge, or privity of the defendant; that the damages claimed herein exceed the value

of each vessel, including their pending freight; and the defendant herewith claims benefit of any and all laws and statutes of the United States of America, including but not limited to, Limitation of Liability of the defendant, 46 USCA, Appx. § 183 (b).

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant is a charitable organization for purposes of M.G.L. c. 231, § 85K and thereby entitled to charitable immunity.

WHEREFORE, the defendant prays that the above Complaint be dismissed with prejudice together with costs and reasonable attorney's fees.

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/ Thomas J. Muzyka"

Thomas J. Muzyka

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